

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

UNITED STATES OF AMERICA)	
)	
V.)	
)	CRIMINAL NO. W-12-CR-050(1)
)	
ADAM TENDEN RAY)	

**UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR REDUCTION OF
SENTENCE OF IMPRISONMENT**

I. PROCEDURAL HISTORY

On May 31, 2012, the Defendant pled guilty to a three-count Indictment charging him in Count One with *Possession With Intent to Distribute Methamphetamine*, in Count Two with *Possession of a Firearm in Furtherance of a Drug Trafficking Crime* and in Count Three with *Possession of a Firearm by a Convicted Felon*. On October 18, 2012, he was sentenced to 168 months incarceration as to Count One, 60 months as to Count Two and 120 months as to Count Three. The sentence in Count Two was ordered to run consecutive to the concurrent sentences in Counts One and Three.

The Defendant's guideline range as calculated by the Probation Department was 168 to 210 months.

Subsequently, the United States Sentencing Commission lowered the guideline range for controlled substance offenses across the board pursuant to amendment 782 to the United States Sentencing Guidelines, effective November 1, 2015. That amendment was made retroactive by

the Commission pursuant to U.S.S.G. § 1B1.10. The statutory authority for any reduction of a term of imprisonment is found in 18 U.S.C. 3582(c)(2). The effect of this amendment would be to lower the defendant's guideline range to 140 to 175 months.

On May 26, 2015, the Defendant moved to reduce his sentence pursuant to U.S.S.G. Amendment 782. [Doc. 79] The motion was denied by the Court. In its order, the Court concluded that, considering the "Defendant's background and the serious danger to society his early release would pose" the motion was denied. The Court reviewed the factors in 18 U.S.C. 3553(a) and found that "[a] sentence reduction would not adequately reflect Defendant's culpability and the seriousness of the offense, promote respect for the law, or afford adequate deterrence to criminal conduct considering the amount of drugs involved and his criminal history." [Doc. 82]

On July 2, 2019, the instant motion, a second motion for a sentence reduction pursuant to Amendment 782, was filed.

II. ARGUMENT AND AUTHORITIES

U.S.S.G. § 1B1.10 is permissive in its effect. That is, this Court is not required to lower a defendant's sentence based on a later change made retroactive by the Commission. Instead, this Court is directed to consider the factors listed in 18 U.S.C. 3553(a) to determine whether a reduction is warranted, including public safety considerations and post-sentencing conduct. U.S.S.G. § 1B1.10, Application Note 1.(B).

This same motion was made by the Defendant over four years ago and was denied by the Court. The Defendant has given no reasons why the Court should now consider giving him a reduced sentence. The Probation Department noted that the Bureau of Prisons disciplined the

Defendant for Possessing Drugs/Alcohol the day after he filed the instant motion. Although he was punished for this violation by the BOP, (41 days loss of good time credit, 10 days disciplinary segregation, 90 days loss of commissary, email, visitation and telephone privileges) his conduct demonstrates that his sentence should not be disturbed. See U.S.S.G. 1B1.10, Application Note 1(B).

WHEREFORE, premises considered, the United States respectfully requests that the Defendant's Motion For Reduction of Sentence of Imprisonment be DENIED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 15th day of November 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to defendant's attorney of record: Joe Rodriguez.

Mark L. Frazier

MARK L. FRAZIER
Assistant United States Attorney

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ORDER

On this day came on to be considered the Defendant's Motion For Reduction of Sentence of Imprisonment and the Government's Response to the same and the Court being fully advised of the premises, hereby DENIES the Defendant's motion.

SIGNED this the ____ day of _____, 2019.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE